

AGREEMENT NUMBER: MD2013NP018



Metropolitan Dayton Educational Cooperative Association
225 Linwood Street, Dayton, OH 45405
Phone: (937) 223-4980 Fax: (937) 223-2385

**SERVICE PROVIDER CONTRACT
INTERNET SERVICE**

This agreement for the provision of Internet Access Service ("Agreement") is entered into on this 11th day of March, 2013, between the **Metropolitan Dayton Educational Cooperative Association** ("Provider") and **St. Luke Catholic School** ("Customer"), as verified by the signatures on the signature page below.

WHEREAS, Provider is an information technology center organized by the State of Ohio to provide communications and other technology services, and;

WHEREAS, the Customer is a School District or School certified for instruction by the State of Ohio, and;

WHEREAS, the Provider through its information technology center desires to provide to Customer and Customer desires to secure from Providers the services detailed in this Agreement;

NOW THEREFORE, in consideration of the mutual agreements hereinafter set forth and for other good and valuable consideration, the parties hereto, intending to be legally bound, agrees as follows:

1. DEFINITIONS

As used in this Agreement the following terms shall be defined as follows:

"Agreement" shall mean this document, and all of its addendums, schedules, and other documents incorporated by reference.

"Anti-virus" and "Anti-Spam Filtering" mean the use of certain detection rules and techniques, to be selected and implemented by MDECA, to determine if a message or any inbound attachment is "junk" or "spam" or contains a virus;

"Bulk E-mail" or "Spam" means unsolicited email sent en masse, is deemed to include a group of approximately five hundred (500) or more emails with substantially similar content; however, MDECA reserves the right, acting in good faith, to determine whether any particular transmission constitutes Bulk email;

"Content" means any information, data, text, software, music, sound, photographs, video, messages, or other materials transmitted using the Services;

"Customer" shall mean a public or private school or school district or other educational entity that has agreed to the terms and conditions of this Agreement;

"End User" or "User" shall mean a school or person authorized by a school to make use of the data services or equipment secured by Customer from Provider by this Agreement;

"Internet Access Service," "Service," or "Services" shall mean the Provider's basic conduit access to the Internet and for services that are an integral component part of basic conduit access as set forth in this Agreement. Integral components include: (1) Provider's standard service configuration including bandwidth from the Customer's desired location; (2) non-exclusive use of equipment at the Customer site to manage Internet traffic; (3) firewall protection services; (4) IP addresses and translation; (5) secure network structure services; and (6) basic maintenance/technical support;

"Password" means the password associated with an End User's account;

"Provider" shall mean the information technology center by the name of Metropolitan Dayton Educational Cooperative Association ("MDECA").

2. PERFORMANCE

Provider shall furnish Customer with the following Internet Access Services:

- 2.1 Bandwidth from the Customer's location (demarc) to either Provider's Technology Center, 225 Linwood Street, Dayton, OH 45405, or another building in the district, according to the network topology model in use by the district. Data circuit(s) would be a minimum of 100 MB. Provider will coordinate installation of all data circuits provided under Provider's Internet Access Services.

- 2.2 Customer may request an increase in bandwidth speed by submitting a purchase order to Provider in accordance with Schedule 1 of the Agreement. All bandwidth changes are subject to review and written approval by the Provider.
- 2.3 Upstream Internet bandwidth to the public internet (Internet Access Service) with firewall protection services from the public Internet. Provider is dual homed running BGP to route over the two upstream gigabyte Ethernet fiber optic links. At minimum, the primary path is 550 mb and the secondary path is 500 mb that provide upstream Internet access to all Customers. Provider also manages a firewall to protect the network from unwanted attacks.
- 2.4 IP addresses are in the 10.x.x.x private addressing space. Address translation to the public IP address space takes place at Provider's firewall. Any district owned servers that provide services to the public Internet can be mapped through the firewall on a case-by-case basis.
- 2.5 Secure network structure. Provider has developed and enforces network policies to protect the integrity and security of the Network. As an example, all Customers have restricted access from other Customers' networks (*i.e.*, Web servers are accessible as needed, but other workstations and servers are not accessible). Access is restricted to content on the public Internet deemed appropriate for the K-12 education.
- 2.6 Basic maintenance and technical support. Provider will provide maintenance and support at no extra charge to maintain reliable operation of Internet Access Services to its Customer. In the event the outage is determined to be local to the Customer, Provider also provides local area network assistance and local area network switch maintenance for an additional fee.

3. TERM AND RENEWAL

- 3.1 This Agreement shall be for the period beginning **July 01, 2013** and ending **June 30, 2018**.
- 3.2 This Agreement is not contingent upon approval of E-Rate funding.

4. CHARGES AND PAYMENT

- 4.1 Customer agrees to be solely responsible to Provider for all charges billed by Provider for Services provided to Customer under this Agreement. Charges for the Services provided under this Agreement are set forth on Charts A and B of attached Schedule 1. Charges will normally be billed to Customer on an **annual** basis during the first two months of the fiscal/program year. Provider reserves the right to delay billing to the Customer during the fiscal/program year and/or change the annual basis of billing to a more frequent billing basis/cycle if deemed appropriate by Provider. Additional billing(s) may occur during the fiscal/program year for additional charges associated with any increase(s) to bandwidth.
- 4.2 Payment of all invoices sent shall be due within thirty (30) days of the send out date on the Customer's receipt invoice. Provider may at its sole discretion terminate or suspend the Services to any Customer whose payments are in arrears by more than sixty (60) days. Such suspension shall not be deemed a waiver of other legal or equitable rights the Provider may have for full payment.

5. TERMINATION

- 5.1 In addition to the suspension or termination specified in Section 4.2, MDECA may suspend Services to Customer or to individual Users, at its sole discretion, if MDECA believes that Customer or User:
 - 5.1.1 Has engaged in, facilitated, or furthered unlawful conduct;
 - 5.1.2 Has used any portion of the Services as a destination linked from any Bulk E-mail or Spam;
 - 5.1.3 Has used any automated process or service to access and/or use the email service (such as a BOT, a spider, periodic caching of information stored by MDECA, or meta-searching);
 - 5.1.4 Has used any unauthorized means to modify or reroute, or attempt to modify or reroute, the Services, or any component thereof;
 - 5.1.5 Has damaged, disabled, overburdened or impaired the Services;
- 5.2 MDECA may terminate Services at any time if it believes, in its sole discretion, that it is necessary to do so to protect MDECA or other program participants or if Customer has breached any provision of this Agreement.
- 5.3 MDECA may require Customer to terminate any User that has acted in breach of this Agreement.

6. CUSTOMER OBLIGATIONS, WARRANTIES AND LIMITATIONS ON LIABILITY

- 6.1 MDECA is offering the Service to Customer for its own use and for a limited number of End Users associated with the Customer. Customer is prohibited from reselling the Service or otherwise offering the Service to the Public, with the exception of allowing community use of Service in adherence with the requirements set forth in the Federal Communication Commission's Sixth Report and Order (FCC 10-175).

- 6.2 Each End User's use of the Service is pursuant to and subject to the terms, conditions, privacy policies, and acceptable use policies between End User and Customer; provided, however, that Customer shall not attempt to authorize or permit any activities in conflict with the terms and conditions of this Agreement.
- 6.3 Customer will obtain, at its own expense, any and all permits necessary in connection with its performance of the Agreement.
- 6.4 Providers shall be liable to Customer for failure to provide Services, but only if such failure(s) is due to the negligence of Provider except that: 1) Provider shall not be liable for any damages incurred as a result of the errors, omissions or negligence of Customer, its personnel, employees, agents or Users, and 2) Provider shall not be liable for failure to perform if such failure is caused by acts of God, winds, fires, landslides, floods, droughts, famines, acts of public enemies, insurrection, military action, sabotage, riots, or civil disturbances, failure of a utility or utility type service which is essential to the Provider's Service or other event(s) not reasonably within the control of the Provider.
- 6.5 Customer must primarily utilize the Services provided for educational and educational administrative related activities. Customer must adhere to the requirements set forth in the Federal Communication Commission's Sixth Report and Order (FCC 10-175) regarding community use.
- 6.6 Where the Services provided include access to the Internet networks, Provider does not warrant that the functions of the Internet network will meet any specific Customer or User requirements, or that Services provided will be error free or uninterrupted. The Service is provided "as is," without any warranty of any kind.
- 6.7 Provider shall not be liable for any actual damages or any indirect, incidental, special or consequential damages (including as a result of loss of data or misinformation) sustained in connection with the use, operation, or inability to use the Provider Services by Customer or its Users.
- 6.8 Customer understands and agrees that Provider will not exercise control over the information that Customer and Users may transmit and access as a result of the provision of Services by Provider and that, therefore, Customer will make no claim against Provider for the Internet service uses, including transmission, downloading or uploading of information that is offensive, a violation of the law, or the actionable violation of others' rights. Unless special arrangements are made and appended to this Agreement, Provider will not routinely monitor Customer's activities or pupil access to any of the interconnected systems. Any filters or screening devices are limited to those in existence at the date of this Agreement or for which Provider subsequently installs. Provider does not warrant the accuracy or appropriateness of any information contained in the interconnected systems. Some material contained in the interconnected systems may be inappropriate for school aged pupils.
- 6.9 Customer, directly or through its agents, in permitting pupil access to the interconnected computer system(s) of the Internet through Provider, assumes full responsibility for any and all access to and usage of information contained on the interconnected computer system(s) of the Internet.
- 6.10 Provider reserves the right to discontinue Customer's access to the Provider's Service and/or seek other legal or equitable relief for use of the Services that Provider deems to be in violation of the rules and regulations of the State Board of Education; or in violation of this Agreement; or violate state and federal law; or are uncivil. For purposes of this Agreement, uncivil conduct includes but is not limited to: 1) contact that misleads anyone as to the publisher/transmitter's identity, including, without limitation, by pretending to be someone else, falsifying personal information or concealing his or her true identity; 2) knowingly transmitting offensive or harassing statements; 3) developing and/or transmitting offensive or unlawful graphics; 4) solicitation or encouragement of others to engage in sexual, offensive or unlawful acts; 5) granting permission or encouragement to others to gain unauthorized access to the Providers network and public networks including access to the Internet; 6) conduct intended to interrupt, destroy or limit the functionality or integrity of any computer software or hardware; 7) transmission of content that is unlawful, harmful, threatening, abusive, harassing, tortious, defamatory, vulgar, obscene, libelous, invasive of another's privacy, hateful, or racially, sexually, ethnically or otherwise objectionable or in violation of other legal rights (including copyrights, trademarks or patents) of any person.
- 6.11 Customer understands and agrees that Provider shall have no responsibility for Customer's or its Users' accessing or transmitting offensive or unlawful information, interference or unlawful access to others' information or networks, or other offensive or unlawful activity in which Provider's Service is used.
- 6.12 Although no duty is imposed upon Provider by this Agreement to monitor Customer or its Users' transmissions, it shall not be prohibited from monitoring.

7. PROPERTY

- 7.1 The rights to all written procedures and similar items utilized or developed in connection with this Agreement reside with Provider and are not to be considered the property of Customer.

8. CONFIDENTIALITY OF INFORMATION

- 8.1 Provider shall exercise ordinary care in preserving and protecting the confidentiality of information and materials furnished by Customer.
- 8.2 Except as required by law, Provider agrees not to disclose any materials, information, or other data relating to Customer's operations, to other individuals, corporate entities, districts, or governmental agencies, without prior written consent from Customer.

8.3 Except as required by law, Customer agrees not to disclose any information or documentation obtained from Provider.

9. **SECURITY**

Customer will remain current with and install all vendor service-related updates, including, without limitation, security patches, protocol updates, and hot fixes as required to support the use of the Service on the End User workstation.

10. **NOTICES**

10.1 All notices permitted or required to be given to either of the parties to this Agreement shall be in writing and shall be deemed given or delivered when: (a) delivered by hand or (b) mailed, if sent by regular mail or other express delivery service (receipt requested), in each case to the appropriate addresses set forth below (or to such other addresses as the party may designate by notice to the other party hereto):

10.1.1 If to Provider:

Name: MDECA, Attn: Dean A. Reineke, Executive Director
Address: 225 Linwood Street
City/State/Zip: Dayton, OH 45405
Phone: (937) 223-4980
Facsimile: (937) 223-2385
E-mail: reineke@mdeca.org

10.1.2 If to Customer:

Name: St. Luke Catholic School
Address: 1442 N Fairfield Rd
City/State/Zip: Beavercreek, OH 45432
Phone: (937) 428-8551
Facsimile: 426-6435
E-mail: vondrel@stlukeand.pvt.k12.oh.us

11. **GENERAL PROVISIONS**

11.1 **Successors and Assigns.** This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors, assigns, heirs and personal representatives.

11.2 **Ownership.** MDECA and its licensors will retain all right, title, and interest in and to the Services for the tools, and all other content, documentation, technology, software, materials, and services.

11.3 **Modification, Waiver, Discharge, etc.** This Agreement may not be released, discharged, changed or modified in any manner, except by an instrument in writing signed by both parties. The failure of either party to enforce at any time any of the provision(s) of this Agreement shall in not be construed to be a waiver of any provision(s), nor in any way to affect the validity of this Agreement or any part hereof or the right of either party hereto to enforce each and every such provision. No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. Any and all purchase orders issued subject to Schedule 1 of this Agreement shall be subject to the terms and conditions of this Agreement.

11.4 **Indemnification.** Customer, at its own expense, will indemnify, defend, and hold harmless MDECA and its employees, directors, officers, representatives, agents, affiliates, and third party beneficiaries (including MDECA suppliers), against any claim, suit, action, or other proceeding brought against MDECA based on or arising from any claim or alleged claim (i) relating to any product or service of Customer, including, but not limited to, Customer's advertising, systems, and other processes, fees charged, billing practices and customer service; or (ii) relating to any agreement with any User of Customer. Customer will not enter into any settlement or compromise of any such indemnifiable claim without MDECA's prior written consent, which consent shall not be unreasonably withheld. Customer will pay any and all costs, damages, and expenses, including, but not limited to, reasonable attorneys' fees and costs awarded against or otherwise incurred by MDECA in connection with or arising from any such indemnifiable claim, suit, action, or proceeding.

11.5 **Captions.** The captions in this Agreement are inserted only as a matter of convenience and as a reference, and in no way define, limit or describe the scope or intent of this Agreement or any of the provisions hereof.

11.6 **Rights of Persons Not Parties.** Nothing contained in this Agreement shall be deemed to create rights in persons not parties hereto.

11.7 **Severability.** If any provision of this Agreement or the application thereof to any persons or circumstances shall, for any reason or to any extent, be held invalid or unenforceable, the remainder of this Agreement and the application of such provision to such other persons or circumstances shall not be affected thereby, but rather shall be enforced to the greatest extent permitted by law.

11.8 **Entire Agreement.** This Agreement, together with the documents referred to herein, shall constitute the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous negotiations, commitments and writing with respect to such subject matter.

Internet Service Agreement Page 5 of 5

- 11.9 **Counterparts.** This Agreement may be executed in several counterparts, all of which taken together shall constitute one single agreement between the parties hereto.
- 11.10 **Construction.** This Agreement and its validity, interpretation and effect shall be construed in accordance with and governed by the laws of the State of Ohio. The parties have participated jointly in the negotiation and drafting of this Agreement. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring any party by virtue of authorship of any specific provisions of the Agreement. When used in this Agreement, the word "including" shall mean including without limitation.
- 11.11 **Compliance with Law.** Each party agrees to comply with all governmental laws and regulations applicable to the Services contemplated by this Agreement. Customer agrees to provide such written evidence of the approval of this Agreement as may be required by law.

Fully Understand and Freely Enter. The undersigned hereby acknowledge that they have read and understand the foregoing. The parties to this Agreement also acknowledge that the execution of this Agreement is a free and voluntary act, done in belief that the Agreement is fair and reasonable. Finally, the parties acknowledge that they have had the right and opportunity to consult with and obtain the advice of independent legal counsel of the parties' own choosing in the negotiation and execution of this Agreement.

By signing below, Signatory of Customer ("Signatory") certifies authorization to sign on behalf of Customer and certifies having read, understood and agreed to the terms of this Agreement, including the provisions of the attached exhibits which are hereby incorporated herein by reference. Signatory certifies that all information provided by Customer in connection with this Agreement is true and accurate.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date first set forth above.

CUSTOMER:

St. Luke Catholic School
Printed Name of Customer

Signature of Authorized Customer Representative

3-12-13
Date

Printed Name and Title of Authorized Customer Representative

Signature of Authorized Customer Representative

Date

Printed Name and Title of Authorized Customer Representative

PROVIDER:

Metropolitan Dayton Educational Cooperative Association
Printed Name of Provider

Signature of Executive Director for the Provider

3/12/13
Date

Dean A. Reineke
Printed Name of Executive Director for the Provider



Metropolitan Dayton Educational Cooperative Association
225 Linwood Street, Dayton, OH 45405
Phone: (937) 223-4980 Fax: (937) 223-2386

EXHIBIT A INTERNET ACCESS SERVICES

This exhibit is hereby made part of the Internet Access Service Agreement (the "Agreement") entered between the Metropolitan Dayton Educational Cooperative Association ("Provider") and St. Luke Catholic School ("Customer"), as these terms are defined in the Agreement. The following additional terms and conditions apply to the Agreement.

Charges will be incurred for only those Services for which a rate is shown and/or a charge is itemized. Services will be rendered for the period of the Agreement, unless otherwise stated below.

1. Services
The Services provided and their attendant costs are set forth on Schedule 1 attached hereto and incorporated herein by reference.
2. Additional Charges
Customer agrees to pay for any installation costs, if incurred, as a result of providing Services to Customer.
3. Metropolitan Dayton Educational Cooperative Association's Obligations
 - a) The Metropolitan Dayton Educational Cooperative Association will provide sufficient configuration information to the Customer's personnel.
 - b) The Metropolitan Dayton Educational Cooperative Association will plan and coordinate all activities incidental to the implementation of the Internet access connection.
 - c) The Metropolitan Dayton Educational Cooperative Association will assume all responsibilities for the physical Internet access system up to and including the network edge device at a single building location.
4. Customer's Obligations
 - a) Customer will assume all responsibilities for all local area networks (LAN) connected to an Internet access connection. These responsibilities include, but are not limited to, Customer-owned communications equipment/cabling, LAN software, and LAN hardware.
 - b) Customer agrees to comply with equipment specifications defined by the Metropolitan Dayton Educational Cooperative Association for all components integral to the Internet access.
 - c) Customer will make its personnel and records available to the extent necessary to facilitate the planning, training and implementation process of the Internet access connection.
 - d) Customer will provide the Metropolitan Dayton Educational Cooperative Association with appropriate and sufficient space and electrical power to facilitate the Internet access.
 - e) Customer agrees not to connect any of its local area networks to alternative Internet service providers without the prior approval of the Metropolitan Dayton Educational Cooperative Association.
 - f) Customer agrees not to resell any Internet access services provided by the Metropolitan Dayton Educational Cooperative Association.
 - g) Customer shall maintain User accounts using authorized methods and utilities provided by MDECA for the Services.

CUSTOMER:

St. Luke Catholic School
Printed Name of Customer

Signature of Authorized Customer Representative

3-12-13
Date

Printed Name and Title of Authorized Customer Representative

Signature of Authorized Customer Representative

Date

Printed Name and Title of Authorized Customer Representative

PROVIDER:

Metropolitan Dayton Educational Cooperative Association
Printed Name of Provider

Signature of Executive Director for the Provider

Dean A. Reineke

Printed Name of Executive Director for the Provider



Metropolitan Dayton Educational Cooperative Association
225 Linwood Street, Dayton, OH 45405
Phone: (937) 223-4980 Fax: (937) 223-2385

Schedule 1
Summary of Costs

This exhibit is hereby made part of the Internet Access Service Agreement (the "Agreement") entered between the Metropolitan Dayton Educational Cooperative Association ("Provider") and St. Luke Catholic School ("Customer"), as these terms are defined in the Agreement.

Provider will render a minimum of 100 MB of basic conduit access to the Internet for the period of the Agreement.

1. The minimum charges and service levels for basic conduit access to the Internet, based on a 5 year agreement, (07/01/2013 – 06/30/2018) are indicated below in Chart A.

Chart A

Qty (Months)	Building	Building Address	Product or Service Description	Minimum Bandwidth
60	St. Luke Catholic School	1442 N Fairfield Rd Beavercreek, OH 45432	Basic Conduit Access to the Internet	100 MB
Minimum Recurring Monthly Charges for All Above-Listed Services:				\$893.33
Minimum Annual Pre-Discount Charges For Above Listed Services - Recurring:			\$10,719.96	
Minimum Annual Pre-Discount Charges For Above Listed Services - Non-Recurring:			\$0.00	
Minimum Annual Pre-Discount Charges For Above Listed Services - Total:				\$10,719.96
Minimum 60 Month Agreement Pre-Discount Charges For Above Listed Services:				\$53,599.80

2. The cost of transport from the Bandwidth Service Provider may vary and will be passed through directly. Increases to connection charges based on allowable increase(s) to bandwidth speed are shown below in Chart B. Customer may request an increase in bandwidth speed as detailed in Chart B below by submitting a purchase order to Provider. All bandwidth changes are subject to review and written approval by the Provider.

Chart B

Allowable Increase(s) to Bandwidth	Increase in Monthly Charges (per connection)	Increase in Annual Charges (per connection)
Increase from 100 MB to 250 MB	\$360.00	\$4,320.00

SUMMARY OF ANNUAL CHARGES:

Agreement Year 1 (07/01/2013 – 06/30/2014) minimum total charges:	\$10,719.96
Agreement Year 2 (07/01/2014 – 06/30/2015) estimated (minimum) total charges:	\$10,719.96
Agreement Year 3 (07/01/2015 – 06/30/2016) estimated (minimum) total charges:	\$10,719.96
Agreement Year 4 (07/01/2016 – 06/30/2017) estimated (minimum) total charges:	\$10,719.96
Agreement Year 5 (07/01/2017 – 06/30/2018) estimated (minimum) total charges:	\$10,719.96

Additional Information needed to complete E-Rate Form 471

CATEGORY OF SERVICE: PRIORITY 1 – Internet Access
SPIN NUMBER: 143033773
SERVICE PROVIDER NAME: Metropolitan Dayton Educational Cooperative Association
CONTRACT NUMBER: MD2013NP018
BILLING ACCOUNT NUMBER: STLUK156
CONTRACT AWARD DATE: Date the enclosed contract is signed by Customer (must be on or after your Allowable Contract Date)
SERVICE START DATE: 07/01/2013
CONTRACT EXPIRATION DATE: 06/30/2018

This agreement is not contingent upon approval of E-Rate funding.